

House Bill 591

By: Representatives Maxwell of the 17th, Cox of the 102nd, Hembree of the 67th, Heckstall of the 62nd, Murphy of the 23rd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 3 of Chapter 6 of Title 17 of the Official Code of Georgia Annotated, relating to proceedings for forfeiture of bonds or recognizances, so as provide that deportation constitutes a condition not warranting forfeiture of bond for failure to appear; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 6 of Title 17 of the Official Code of Georgia Annotated, relating to proceedings for forfeiture of bonds or recognizances, is amended by striking Code Section 17-6-72, relating to conditions not warranting forfeiture of bond for failure to appear, in its entirety and inserting in lieu thereof the following:

"17-6-72.

(a) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court by the written statement of a licensed physician that the principal on the bond was prevented from attending by some mental or physical disability.

(b) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to the satisfaction of the court that the principal on the bond was prevented from attending because he or she was detained by reason of arrest, sentence, or confinement in a penal institution or jail in the State of Georgia, or so detained in another jurisdiction, or because he or she was involuntarily confined or detained pursuant to court order in a mental institution in the State of Georgia or in another jurisdiction. An official written notice of the holding institution in which the principal is being detained or confined shall be considered proof of the principal's detention or confinement and such notice may be sent from the holding institution by mail or delivered by hand or by facsimile machine. Upon the presentation of such written notice to the clerk of the proper court, the prosecuting attorney, and the sheriff or other law enforcement officer having jurisdiction over the case, along with a letter of intent to pay all costs of returning the principal to the jurisdiction of

1 the court, such notice and letter shall serve as the surety's request for a detainer or hold to
2 be placed on the principal. Should there be a failure to place a detainer or hold within 15
3 days, excluding Saturdays, Sundays, and legal holidays, and after such presentation of such
4 notice and letter of intent to pay costs, the surety shall then be relieved of the liability for
5 the appearance bond without further order of the court.

6 (c) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown to
7 the satisfaction of the court that prior to the entry of the judgment on the forfeiture the
8 principal on the bond is in the custody of the sheriff or other responsible law enforcement
9 agency. An official written notice of the holding institution in which the principal is being
10 detained or confined shall be considered proof of the principal's detention or confinement
11 and such notice may be sent from the holding institution by mail or delivered by hand or
12 by facsimile machine. Upon presentation of such written notice to the clerk of the proper
13 court, the prosecuting attorney, and the sheriff or other law enforcement officer having
14 jurisdiction over the case along with a letter of intent to pay all costs of returning the
15 principal to the jurisdiction of the court, such notice and letter shall serve as the surety's
16 request for a detainer or hold to be placed against the principal. Should there be a failure
17 to place a detainer or hold within 15 days, excluding Saturdays, Sundays, and legal
18 holidays, and after presentation of such notice and letter of intent to pay costs, the surety
19 shall then be relieved of the liability for the appearance bond without further order of the
20 court.

21 (d) No judgment shall be rendered on a forfeiture of any appearance bond if it is shown
22 to the satisfaction of the court that the principal on the bond was prevented from attending
23 because he or she was deported pursuant to a judicial order of removal pursuant to
24 proceedings instituted by the Department of Immigration and Naturalization Services. A
25 certified copy of the judicial order of removal together with an affidavit stating that the
26 removal order has been fully executed shall be considered proof of the principal's
27 deportation. Upon the presentation of such written documentation to the clerk of the proper
28 court, the prosecuting attorney, and the sheriff or other law enforcement officer having
29 jurisdiction over the case, the surety shall then be relieved of the liability for the
30 appearance bond without further order of the court.

31 ~~(d)~~(e) In cases in which paragraph (3) of this subsection is not applicable, on application
32 filed within 120 days from the payment of judgment, the court shall order remission under
33 the following conditions:

34 (1) Provided the bond amount has been paid within 120 days after judgment and the
35 delay has not prevented prosecution of the principal and upon application to the court
36 with prior notice to the prosecuting attorney of such application, said court shall direct
37 remission of 95 percent of the bond amount remitted to the surety if the surety locates the

principal in the custody of the sheriff in the jurisdiction where the bond was made or in another jurisdiction causing the return of the principal to the jurisdiction where the bond was made, apprehends, surrenders, or produces the principal, if the apprehension or surrender of the principal was substantially procured or caused by the surety, or if the location of the principal by the surety caused the adjudication of the principal in the jurisdiction in which the bond was made. Should the surety, within two years of the principal's failure to appear, locate the principal in the custody of the sheriff in the jurisdiction where the bond was made or in another jurisdiction causing the return of the principal to the jurisdiction where the bond was made, apprehend, surrender, or produce the principal, if the apprehension or surrender of the principal is substantially procured or caused by the surety, or if the location of the principal by the surety causes the adjudication of the principal in the jurisdiction in which the bond was made, the surety shall be entitled to a refund of 50 percent of the bond amount. The application for 50 percent remission shall be filed no later than 30 days following the expiration of the two-year period following the date of judgment;

(2) Remission shall be granted upon condition of the payment of court costs and of the expenses of returning the principal to the jurisdiction by the surety; or

(3) If, within 120 days after judgment, the surety surrenders the principal to the sheriff or responsible law enforcement officer, or said surrender has been denied by the sheriff or responsible law enforcement officer, or surety locates the principal in custody in another jurisdiction, the surety shall only be required to pay costs and 5 percent of the face amount of the bond, which amount includes all surcharges. If it is shown to the satisfaction of the court, by the presentation of competent evidence from the sheriff or the holding institution, that said surrender has been made or denied or that the principal is in custody in another jurisdiction or that said surrender has been made and that 5 percent of the face amount of the bond and all costs have been tendered to the sheriff, the court shall direct that the judgment be marked satisfied and that the writ of execution, *fi. fa.*, be canceled."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.